

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AMANDA COLLINS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MATTHEW COLLINS,

Respondent-Appellant.

UNPUBLISHED

May 22, 2007

No. 273780

Macomb Circuit Court

Family Division

LC No. 2006-000315-NA

In the Matter of DUSTIN COLLINS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MATTHEW COLLINS,

Respondent-Appellant.

No. 273781

Macomb Circuit Court

Family Division

LC No. 2006-000316-NA

In the Matter of KATELYNNE COLLINS, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MATTHEW COLLINS,

Respondent-Appellant.

No. 273782

Macomb Circuit Court

Family Division

LC No. 2006-000318-NA

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals as of right from the trial court order terminating his parental rights to the minor children under MCL 712A.19b(3)(n)(i). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

The petition requesting termination of respondent's parental rights alleged that he had been convicted of first-degree criminal sexual conduct where the victim was a minor child, was sentenced to ten years in prison and served eight years of that sentence, had failed to protect the minor children from the abuse and neglect of their mother, and refused to provide financial or physical support for the minor children. Respondent did not appear at the trial. When the trial court inquired about his whereabouts, respondent's attorney stated that he had appeared but had left the premises when he discovered that the minor children did not want to see him. Petitioner requested permission to amend the petition to include MCL 712A.19b(3)(n)(i) as grounds for termination of respondent's parental rights. The trial court granted the request, finding that there was no surprise and that all of the underlying facts for the amendment were well known to all parties involved. In terminating respondent's parental rights, the trial court relied solely on that statutory ground.

Respondent does not argue that the trial court erred in finding that the statutory ground for termination was established by clear and convincing evidence. He instead argues that his right to due process was violated when the trial court granted petitioner's motion to amend the petition to add MCL 712A.19b(3)(n)(i) as a statutory ground for termination of his parental rights. We disagree. We review unpreserved, constitutional error under the plain error rule. "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights" *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Further, this Court reviews decisions terminating parental rights for clear error. MCR 3.977(J).

Respondent has not demonstrated that plain error occurred because respondent was given sufficient notice of the proofs he would have to refute to prevent termination. It should not have come as a surprise to respondent that not only the criminal sexual conduct conviction but also the issue of the effect of it on his relationship with the minor children would be addressed at trial. Respondent's due process right to notice is not compromised where the petition lists the allegations with specificity, although the statutory provisions are not expressly enumerated. *In re Slis*, 144 Mich App 678, 684; 375 NW2d 788 (1985).

We also reject respondent's argument that he was denied the effective assistance of counsel when his attorney did not object to petitioner's request to amend the petition. To prevail on a claim of ineffective assistance of counsel, a respondent must show not only that counsel's representation was deficient, but also that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002). Even if respondent's attorney had in fact objected to the addition of another ground for termination, the trial court had the discretion to allow the amendment. The court did not abuse its discretion where the petition alleged sufficient facts to put respondent on

notice that termination was being sought under MCL 712A.19b(3)(n)(i). Thus, respondent's attorney's objection would have been without merit. A lawyer does not render ineffective assistance of counsel by failing to advocate a meritless position. *Id.* at 209.

Affirmed.

/s/ Helene N. White
/s/ Henry William. Saad
/s/ Christopher M. Murray